

110TH CONGRESS  
2D SESSION

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To amend title XVIII of the Social Security Act to provide for temporary improvements to the Medicare inpatient hospital payment adjustment for low-volume hospitals and to provide for the use of the non-wage adjusted PPS rate under the Medicare-dependent hospital (MDH) program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title XVIII of the Social Security Act to provide for temporary improvements to the Medicare inpatient hospital payment adjustment for low-volume hospitals and to provide for the use of the non-wage adjusted PPS rate under the Medicare-dependent hospital (MDH) program, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Rural Hospital Assist-  
5       ance Act of 2008”.

1 **SEC. 2. TEMPORARY IMPROVEMENTS TO THE MEDICARE**  
2 **INPATIENT HOSPITAL PAYMENT ADJUST-**  
3 **MENT FOR LOW-VOLUME HOSPITALS.**

4 (a) IN GENERAL.—Section 1886(d)(12) of the Social  
5 Security Act (42 U.S.C. 1395ww(d)(12)) is amended—

6 (1) in subparagraph (A), by inserting “or (D)  
7 (for discharges occurring in fiscal year 2009)” after  
8 “subparagraph (B)”;

9 (2) in subparagraph (B), by striking “The Sec-  
10 retary” and inserting “Except as provided in sub-  
11 paragraph (D), the Secretary”;

12 (3) in subparagraph (C)(i)—

13 (A) by inserting “(or, with respect to fiscal  
14 year 2009, 15 road miles)” after “25 road  
15 miles”; and

16 (B) by inserting “(or, with respect to fiscal  
17 year 2009, 1,500 discharges of individuals enti-  
18 tled to, or enrolled for, benefits under part A)”  
19 after “800 discharges”; and

20 (4) by adding at the end the following new sub-  
21 paragraph:

22 “(D) TEMPORARY APPLICABLE PERCENT-  
23 AGE INCREASE.—For discharges occurring in  
24 fiscal year 2009, the Secretary shall determine  
25 an applicable percentage increase for purposes  
26 of subparagraph (A) using a continuous linear

1           sliding scale ranging from 25 percent for low-  
2           volume hospitals with 200 or fewer discharges  
3           of individuals entitled to, or enrolled for, bene-  
4           fits under part A in the fiscal year to 0 percent  
5           for low-volume hospitals with greater than  
6           1,500 discharges of such individuals in the fis-  
7           cal year.”.

8           (b) IMPLEMENTATION.—Notwithstanding any other  
9           provision of law, the Secretary of Health and Human  
10          Services may implement the amendments made by sub-  
11          section (a) by program instruction or otherwise.

12   **SEC. 3. USE OF NON-WAGE ADJUSTED PPS RATE UNDER**  
13                   **THE     MEDICARE-DEPENDENT     HOSPITAL**  
14                   **(MDH) PROGRAM.**

15          (a) IN GENERAL.—Section 1886(d)(5)(G) of the So-  
16          cial Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amend-  
17          ed by adding at the end the following new clause:

18          “(v) In the case of discharges occurring on or after  
19          October 1, 2008, and before October 1, 2009, in deter-  
20          mining the amount under paragraph (1)(A)(iii) for pur-  
21          poses of clauses (i) and (ii)(II), such amount shall, if it  
22          results in greater payments to the hospital, be determined  
23          without regard to any adjustment for different area wage  
24          levels under paragraph (3)(E).”.

1 (b) IMPLEMENTATION.—Notwithstanding any other  
2 provision of law, the Secretary of Health and Human  
3 Services may implement the amendment made by sub-  
4 section (a) by program instruction or otherwise.

5 **SEC. 4. LIMITATION ON MEDICARE EXCEPTION TO THE**  
6 **PROHIBITION ON CERTAIN PHYSICIAN RE-**  
7 **FERRALS FOR HOSPITALS.**

8 (a) IN GENERAL.—Section 1877 of the Social Secu-  
9 rity Act (42 U.S.C. 1395nn) is amended—

10 (1) in subsection (d)(2)—

11 (A) in subparagraph (A), by striking  
12 “and” at the end;

13 (B) in subparagraph (B), by striking the  
14 period at the end and inserting “; and”; and

15 (C) by adding at the end the following new  
16 subparagraph:

17 “(C) in the case where the entity is a hos-  
18 pital, the hospital meets the requirements of  
19 paragraph (3)(D).”;

20 (2) in subsection (d)(3)—

21 (A) in subparagraph (B), by striking  
22 “and” at the end;

23 (B) in subparagraph (C), by striking the  
24 period at the end and inserting “; and”; and

1 (C) by adding at the end the following new  
2 subparagraph:

3 “(D) the hospital meets the requirements  
4 described in subsection (i)(1) not later than 18  
5 months after the date of the enactment of this  
6 subparagraph.”; and

7 (3) by adding at the end the following new sub-  
8 section:

9 “(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY  
10 FOR HOSPITAL EXCEPTION TO OWNERSHIP OR INVEST-  
11 MENT PROHIBITION.—

12 “(1) REQUIREMENTS DESCRIBED.—For pur-  
13 poses of subsection (d)(3)(D), the requirements de-  
14 scribed in this paragraph for a hospital are as fol-  
15 lows:

16 “(A) PROVIDER AGREEMENT.—The hos-  
17 pital had—

18 “(i) physician ownership on Sep-  
19 tember 1, 2008; and

20 “(ii) a provider agreement under sec-  
21 tion 1866 in effect on such date.

22 “(B) LIMITATION ON EXPANSION OF FA-  
23 CILITY CAPACITY.—Except as provided in para-  
24 graph (3), the number of operating rooms, pro-  
25 cedure rooms, and beds of the hospital at any

1           time on or after the date of the enactment of  
2           this subsection are no greater than the number  
3           of operating rooms, procedure rooms, and beds  
4           as of such date.

5                   “(C) PREVENTING CONFLICTS OF INTER-  
6           EST.—

7                           “(i) The hospital submits to the Sec-  
8                   retary an annual report containing a de-  
9                   tailed description of—

10                                   “(I) the identity of each physi-  
11                                   cian owner and any other owners of  
12                                   the hospital; and

13                                   “(II) the nature and extent of all  
14                                   ownership interests in the hospital.

15                           “(ii) The hospital has procedures in  
16                   place to require that any referring physi-  
17                   cian owner discloses to the patient being  
18                   referred, by a time that permits the pa-  
19                   tient to make a meaningful decision re-  
20                   garding the receipt of care, as determined  
21                   by the Secretary—

22                                   “(I) the ownership interest of  
23                                   such referring physician in the hos-  
24                                   pital; and

1 “(II) if applicable, any such own-  
2 ership interest of the treating physi-  
3 cian.

4 “(iii) The hospital does not condition  
5 any physician ownership interests either di-  
6 rectly or indirectly on the physician owner  
7 making or influencing referrals to the hos-  
8 pital or otherwise generating business for  
9 the hospital.

10 “(iv) The hospital discloses the fact  
11 that the hospital is partially owned by phy-  
12 sicians—

13 “(I) on any public website for the  
14 hospital; and

15 “(II) in any public advertising  
16 for the hospital.

17 “(D) ENSURING BONA FIDE INVEST-  
18 MENT.—

19 “(i) Physician owners in the aggregate  
20 do not own more than the greater of—

21 “(I) 40 percent of the total value  
22 of the investment interests held in the  
23 hospital or in an entity whose assets  
24 include the hospital; or

1                   “(II) the percentage of such total  
2                   value determined on the date of enact-  
3                   ment of this subsection.

4                   “(ii) Any ownership or investment in-  
5                   terests that the hospital offers to a physi-  
6                   cian owner are not offered on more favor-  
7                   able terms than the terms offered to a per-  
8                   son who is not a physician owner.

9                   “(iii) The hospital (or any investors in  
10                  the hospital) does not directly or indirectly  
11                  provide loans or financing for any physi-  
12                  cian owner investments in the hospital.

13                  “(iv) The hospital (or any investors in  
14                  the hospital) does not directly or indirectly  
15                  guarantee a loan, make a payment toward  
16                  a loan, or otherwise subsidize a loan, for  
17                  any individual physician owner or group of  
18                  physician owners that is related to acquir-  
19                  ing any ownership interest in the hospital.

20                  “(v) Investment returns are distrib-  
21                  uted to each investor in the hospital in an  
22                  amount that is directly proportional to the  
23                  ownership interest of such investor in the  
24                  hospital.



1                   “(vi) Physician owners do not receive,  
2                   directly or indirectly, any guaranteed re-  
3                   ceipt of or right to purchase other business  
4                   interests related to the hospital, including  
5                   the purchase or lease of any property  
6                   under the control of other investors in the  
7                   hospital or located near the premises of the  
8                   hospital.

9                   “(vii) The hospital does not offer a  
10                  physician owner the opportunity to pur-  
11                  chase or lease any property under the con-  
12                  trol of the hospital or any other investor in  
13                  the hospital on more favorable terms than  
14                  the terms offered to an individual who is  
15                  not a physician owner.

16               “(E) PATIENT SAFETY.—

17               “(i) Insofar as the hospital admits a  
18               patient and does not have any physician  
19               available on the premises to provide serv-  
20               ices during all hours in which the hospital  
21               is providing services to such patient, before  
22               admitting the patient—

23                       “(I) the hospital discloses such  
24                       fact to a patient; and

1                   “(II) following such disclosure,  
2                   the hospital receives from the patient  
3                   a signed acknowledgment that the pa-  
4                   tient understands such fact.

5                   “(ii) The hospital has the capacity  
6                   to—

7                   “(I) provide assessment and ini-  
8                   tial treatment for patients; and

9                   “(II) refer and transfer patients  
10                  to hospitals with the capability to  
11                  treat the needs of the patient in-  
12                  volved.

13                  “(F) LIMITATION ON APPLICATION TO  
14                  CERTAIN CONVERTED FACILITIES.—The hos-  
15                  pital was not converted from an ambulatory  
16                  surgical center to a hospital on or after the date  
17                  of enactment of this subsection.

18                  “(2) PUBLICATION OF INFORMATION RE-  
19                  PORTED.—The Secretary shall publish, and update  
20                  on an annual basis, the information submitted by  
21                  hospitals under paragraph (1)(C)(i) on the public  
22                  Internet website of the Centers for Medicare & Med-  
23                  icaid Services.

24                  “(3) EXCEPTION TO PROHIBITION ON EXPAN-  
25                  SION OF FACILITY CAPACITY.—

1 “(A) PROCESS.—

2 “(i) ESTABLISHMENT.—The Secretary  
3 shall establish and implement a process  
4 under which an applicable hospital (as de-  
5 fined in subparagraph (E)) may apply for  
6 an exception from the requirement under  
7 paragraph (1)(B).

8 “(ii) OPPORTUNITY FOR COMMUNITY  
9 INPUT.—The process under clause (i) shall  
10 provide individuals and entities in the com-  
11 munity that the applicable hospital apply-  
12 ing for an exception is located with the op-  
13 portunity to provide input with respect to  
14 the application.

15 “(iii) TIMING FOR IMPLEMENTA-  
16 TION.—The Secretary shall implement the  
17 process under clause (i) on November 1,  
18 2009.

19 “(iv) REGULATIONS.—Not later than  
20 November 1, 2009, the Secretary shall pro-  
21 mulgate regulations to carry out the proc-  
22 ess under clause (i).

23 “(B) FREQUENCY.—The process described  
24 in subparagraph (A) shall permit an applicable

1 hospital to apply for an exception up to once  
2 every 2 years.

3 “(C) PERMITTED INCREASE.—

4 “(i) IN GENERAL.—Subject to clause  
5 (ii) and subparagraph (D), an applicable  
6 hospital granted an exception under the  
7 process described in subparagraph (A) may  
8 increase the number of operating rooms,  
9 procedure rooms, and beds of the applica-  
10 ble hospital above the baseline number of  
11 operating rooms, procedure rooms, and  
12 beds of the applicable hospital (or, if the  
13 applicable hospital has been granted a pre-  
14 vious exception under this paragraph,  
15 above the number of operating rooms, pro-  
16 cedure rooms, and beds of the hospital  
17 after the application of the most recent in-  
18 crease under such an exception).

19 “(ii) LIFETIME 100 PERCENT IN-  
20 CREASE LIMITATION.—The Secretary shall  
21 not permit an increase in the number of  
22 operating rooms, procedure rooms, and  
23 beds of an applicable hospital under clause  
24 (i) to the extent such increase would result  
25 in the number of operating rooms, proce-

1           dure rooms, and beds of the applicable  
2           hospital exceeding 200 percent of the base-  
3           line number of operating rooms, procedure  
4           rooms, and beds of the applicable hospital.

5           “(iii) BASELINE NUMBER OF OPER-  
6           ATING ROOMS, PROCEDURE ROOMS, AND  
7           BEDS.—In this paragraph, the term ‘base-  
8           line number of operating rooms, procedure  
9           rooms, and beds’ means the number of op-  
10          erating rooms, procedure rooms, and beds  
11          of the applicable hospital as of the date of  
12          enactment of this subsection.

13          “(D) INCREASE LIMITED TO FACILITIES  
14          ON THE MAIN CAMPUS OF THE HOSPITAL.—  
15          Any increase in the number of operating rooms,  
16          procedure rooms, and beds of an applicable hos-  
17          pital pursuant to this paragraph may only occur  
18          in facilities on the main campus of the applica-  
19          ble hospital.

20          “(E) APPLICABLE HOSPITAL.—In this  
21          paragraph, the term ‘applicable hospital’ means  
22          a hospital—

23                 “(i) that is located in a county in  
24                 which the percentage increase in the popu-  
25                 lation during the most recent 5-year period

1 (as of the date of the application under  
2 subparagraph (A)) is at least 150 percent  
3 of the percentage increase in the popu-  
4 lation growth of the State in which the  
5 hospital is located during that period, as  
6 estimated by Bureau of the Census;

7 “(ii) whose annual percent of total in-  
8 patient admissions that represent inpatient  
9 admissions under the program under title  
10 XIX is equal to or greater than the aver-  
11 age percent with respect to such admis-  
12 sions for all hospitals located in the county  
13 in which the hospital is located;

14 “(iii) that does not discriminate  
15 against beneficiaries of Federal health care  
16 programs and does not permit physicians  
17 practicing at the hospital to discriminate  
18 against such beneficiaries;

19 “(iv) that is located in a State in  
20 which the average bed capacity in the  
21 State is less than the national average bed  
22 capacity; and

23 “(v) that has an average bed occu-  
24 pancy rate that is greater than the average

1                   bed occupancy rate in the State in which  
2                   the hospital is located.

3                   “(F) PROCEDURE ROOMS.—In this sub-  
4                   section, the term ‘procedure rooms’ includes  
5                   rooms in which catheterizations, angiographies,  
6                   angiograms, and endoscopies are performed, ex-  
7                   cept such term shall not include emergency  
8                   rooms or departments (exclusive of rooms in  
9                   which catheterizations, angiographies,  
10                  angiograms, and endoscopies are performed).

11                  “(G) PUBLICATION OF FINAL DECISIONS.—Not later than 60 days after receiving  
12                  a complete application under this paragraph,  
13                  the Secretary shall publish in the Federal Reg-  
14                  ister the final decision with respect to such ap-  
15                  plication.

16                  “(H) LIMITATION ON REVIEW.—There  
17                  shall be no administrative or judicial review  
18                  under section 1869, section 1878, or otherwise  
19                  of the process under this paragraph (including  
20                  the establishment of such process).

21                  “(4) COLLECTION OF OWNERSHIP AND INVEST-  
22                  MENT INFORMATION.—For purposes of subpara-  
23                  graphs (A)(i) and (D)(i) of paragraph (1), the Sec-  
24

1       retary shall collect physician ownership and invest-  
2       ment information for each hospital.

3               “(5) PHYSICIAN OWNER DEFINED.—For pur-  
4       poses of this subsection, the term ‘physician owner’  
5       means a physician (or an immediate family member  
6       of such physician) with a direct or an indirect own-  
7       ership interest in the hospital.”.

8       (b) ENFORCEMENT.—

9               (1) ENSURING COMPLIANCE.—The Secretary of  
10       Health and Human Services shall establish policies  
11       and procedures to ensure compliance with the re-  
12       quirements described in subsection (i)(1) of section  
13       1877 of the Social Security Act, as added by sub-  
14       section (a)(3), beginning on the date such require-  
15       ments first apply. Such policies and procedures may  
16       include unannounced site reviews of hospitals.

17              (2) AUDITS.—Beginning not later than January  
18       1, 2010, the Secretary of Health and Human Serv-  
19       ices shall conduct audits to determine if hospitals  
20       violate the requirements referred to in paragraph  
21       (1).